BLANK

PAGE

# In the Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1109.~~ 84

OBED M. LASSEN, Commissioner of Public Lands,
*Petitioner*,

v.

ARIZONA HIGHWAY DEPARTMENT, *Respondent.*

ON PETITION FOR WRIT OF CERTORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

## BRIEF OF THE STATE OF WASHINGTON AS AMICUS CURIAE

JOHN J. O'CONNELL,
*Attorney General.*

HAROLD T. HARTINGER,
*Assistant Attorney General.*

*Attorneys for the State of Washington.*

Office and Post Office Address: Temple of Justice, Olympia, Wn. 98501

STATE PRINTING PLANT, OLYMPIA, WASH.

BLANK

PAGE

# In the Supreme Court of the United States

OCTOBER TERM, 1965

---

No. 1109

---

OBED M. LASSEN, Commissioner of Public Lands,
*Petitioner*,

v.

ARIZONA HIGHWAY DEPARTMENT, *Respondent*.

---

ON PETITION FOR WRIT OF CERTORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

---

## BRIEF OF THE STATE OF WASHINGTON AS AMICUS CURIAE

---

JOHN J. O'CONNELL,
*Attorney General.*

HAROLD T. HARTINGER,
*Assistant Attorney General.*

*Attorneys for the State of Washington.*

Office and Post Office Address: Temple of Justice, Olympia, Wn. 98501

BLANK

PAGE

## INDEX

BLANK

PAGE

# In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1109

OBED M. LASSEN, Commissioner of Public Lands, *Petitioner*,

v.

ARIZONA HIGHWAY DEPARTMENT, *Respondent*.

ON PETITION FOR WRIT OF CERTORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

## BRIEF OF THE STATE OF WASHINGTON AS AMICUS CURIAE

The State of Washington files this brief as *amicus curiae* under sponsorship of its Attorney General pursuant to Rule 42(4), Rules of the Supreme Court.

### INTEREST OF THE AMICUS CURIAE

For the reasons set forth below, the State of Washington as *amicus curiae* urges that the Court grant the petition of the Arizona Land Commissioner for a writ of certiorari to the Supreme Court of Arizona to review its judgment in *State ex rel. Highway Dept. v. Lassen*, 99 Ariz. 161, 407 P.2d 747 (1965).

## REASONS FOR GRANTING THE WRIT

Review of the decision of the Arizona Supreme Court in the instant case is of immediate and practical importance to the State of Washington in the administration of the trust lands acquired by it from the United States under the Enabling Act admitting it to the Union as one of the states of the United States, Act of February 22, 1889, 25 Stat. 676, because:

1. The Arizona decision is contrary to the ruling of the state Attorney General (Appendix A, *infra*, pp. 8-21) that the Department of Highways, before constructing highway facilities over granted school lands, is obligated to pay to the common school fund such amount of compensation as a private owner could claim as just compensation for the taking and damaging of his property.

2. The Arizona decision is contrary to the position of the State of Washington in litigation now pending in the United States District Court for the Eastern District of Washington, Northern Division, Civil No. 2619, *United States v. 111.2 Acres of Land*, wherein the state contends that full market value for an easement in granted school lands (as set forth in Appendix B, *infra*, p. 22) must be ascertained and paid to the state before RCW 90.40.050 (Appendix C, *infra*, p. 23) operates to grant that easement to the United States. The state bases its claim on sections 10 and 11 (as amended) of the

Enabling Act (Appendix D, *infra*, pp. 24-25) and article 16, section 1, of the state constitution.*

3. The Arizona decision has a direct bearing upon litigation now pending in the Superior Court of the State of Washington for Thurston County, Cause No. 36798, *Cole v. Odegaard*, to test the validity of rent-free use of trust land for state park purposes pursuant to the following provision of chapter 56, Laws of Washington 1965:**

> Sec. 16. State lands used by the state parks commission as public parks shall be rent free.

Respectfully submitted,

JOHN J. O'CONNELL,
*Attorney General.*

HAROLD T. HARTINGER,
*Assistant Attorney General.*

*Attorneys for the State of Washington.*

April 7, 1966

---

*Suit was commenced November 20, 1964. However, the United States has not yet announced its position with regard to the issue here noted.

**The plaintiff is the state's Commissioner of Public Lands; the defendants are the Director and members of the State Parks and Recreation Commission.

## APPENDIX A—Opinion of John J. O'Connell, Attorney General for the State of Washington

Olympia, Washington
April 30, 1964

Honorable Bert L. Cole
Commissioner
Department of Natural Resources
Public Lands—Social Security Building
Olympia, Washington

Honorable Charles G. Prahl
Director
Department of Highways
Highways-Licenses Building
Olympia, Washington

GENTLEMEN:

This is written in response to your requests for the advice of this office regarding the matter of construction of state highway facilities over and across state school lands; i.e., those public lands of the state which are held in trust for the support of the common schools as explained below.

It is our opinion that the Department of Highways has general authority under RCW 47.12.020 and other statutes to locate and construct such highway facilities over and across state school lands, provided (1) the rights in such lands which the Department of Highways seeks to obtain through following the procedure outlined therein are rights which it could obtain by proceedings in eminent domain if the lands in question were privately owned;

and (2) the Department of Natural Resources receives, for the benefit of the common schools, that sum of money which would constitute just compensation to a private owner if his lands were being taken.

RCW 47.12.020 establishes a general procedure to be followed "whenever it is necessary to locate and construct a state highway [including limited access facilities established under chapter 47.52 RCW] over and across any of the public lands of the state of Washington."

It provides for filing by the Highway Commission with the Commissioner of Public Lands of maps showing those portions of public lands of the state which are needed for a particular highway project. The effect of such filings is to reserve to the state the areas thus shown on the maps in the event the lands are sold, leased, or otherwise disposed of.

RCW 47.12.020 contains express requirements pertaining to the payment of compensation by the Highway Commission to the Commissioner of Public Lands (1) for any materials extracted for construction or maintenance from any sand or gravel pits or the like located on state lands, and (2) in the event there be timber on such state lands acquired by the Commission for highway construction purposes.

However, for the reasons hereinafter set forth, we deem this statute to require by implication that compensation also be paid in every case where the

state lands in question—upon or across which state highway facilities are to be constructed—are public lands of the state which are held in trust for the support of the common schools (hereinafter referred to as state school lands).

I

At the present time, these state school lands total approximately 1,792,496 acres in area, according to the Third Biennial Report of the Department of Natural Resources. The vast majority of these lands were acquired from the federal government under the provisions of our state enabling act; section 10 thereof granted to the state sections 16 and 36 in every township for the support of the state's common school system. The state accepted the grant[1] and now holds legal title to the lands as trustee to fulfill the purposes of the grant. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407 (1938); *State Highway Commission v. State*, 70 N.D. 673, 297 N.W. 194 (1941).

Those state school lands which have not been acquired from the federal government receive their trust character from Article IX, § 3, of our state constitution. By this provision, the framers of our constitution established a fund for the support of the common schools to be derived not only from the sale or lease of federally granted school lands, but also, *inter alia*, from the proceeds of all property es-

[1]Washington Constitution, Article XVI, § 1.

cheated to the state[2] or willed[3] or granted to the state without specification of purpose.

In this state, education holds a preferred position. Indeed, Article IX of our constitution makes education the paramount duty of the state. Therefore, it is not surprising that the law strictly protects public lands devoted to the support of the common schools. It has been held, for example, that the legislature has no power to provide that title to school lands may be acquired by adverse possession. *O'Brien v. Wilson*, 51 Wash. 52, 97 Pac. 1115 (1908); *State v. City of Seattle*, 57 Wash. 602, 107 Pac. 827 (1910). So strong is the law's protection that even the mistakes of public officials administering the lands will not estop the state from collecting that which is due the trust. *State v. Northwest Magnesite Co.*, 28 Wn. (2d) 1, 182 P. (2d) 643 (1947). And if a loss should occur, despite every safeguard, the constitution provides that it "shall be a permanent funded debt against the state * * * upon which not less than six per cent annual interest shall be paid." Article IX, § 5.

II

The federal government, as grantor of the bulk of the state's school lands, has a clear interest in seeing that the state complies with the terms of the federal grant. *Ervien v. United States*, 251 U. S. 41 (1919); *United States v. Swope*, 16 F. (2d) 215

[2]See also RCW 11.08.080 and 11.08.320.

[3]See also *In re Llewellyn's Estate*, Clark County No. 16383, A.G. File No. 20495.

(C.C.A. 8, 1926). Fortunately for our present purposes, the Enabling Act has been amended so that our conclusions, beyond all question, fall within the terms of the federal grant. Section 11 thereof now contains this provision, which was added by act of May 7, 1932, chapter 172, 47 U.S. Stats. at Large, p. 150:

> The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however*, That none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the State.

The scope of the term "easements and rights" is broad. The grant may include easements, of course, but it may also include greater rights because greater rights, fee title for example, can be acquired by condemnation. *Miller v. City of Pasco*, 50 Wn. (2d) 229, 310 P. (2d) 863 (1957); *City of Tacoma v. Humble Oil & Refining Co.*, 57 Wn. (2d) 257, 356 P. (2d) 586 (1960). Even apart from this fact, it is clear that more than an easement, instead of less, may be granted. The last clause, relating to the conditions under which the grants may be made, refers to the "*estate* or interest disposed of." The use of the term "estate" in itself denotes an interest greater than an easement. *Restatement of the Law*

*of Property*, § 9, Comment b, p. 23 (1936); *II American Law of Property*, § 8.22, p. 245 (1952).

The purpose of the amendment to the Enabling Act is almost self-evident. Where school and other trust lands acquired from the government are to be devoted to public use, there is no need that the grant for such purposes be made only after a "public sale" and "advertising", nor is there any need that a minimum sales price be received. (These are the general requirements of section 10 of the Enabling Act.) Congress has affirmatively manifested an intent that the general restrictions upon disposition of school lands are inapplicable where disposition is made under an exercise of power of eminent domain. The state's inherent power of eminent domain[4] is not interfered with, yet the trust *purpose* is still preserved by the requirement that compensation be made as in the ordinary condemnation.

III

The state constitution, unlike the Enabling Act, does not expressly exempt the disposition of school lands through condemnation or proceedings in lieu of condemnation from the general restrictions on sale or disposition. Section 2 of Article XVI, for example, prohibits the "sale" of school lands at other than a public auction. It also prohibits sale at a price less than that fixed by a board of appraisers. Section 4 of Article XVI limits the acreage that may

[4] See *Miller v. City of Tacoma*, 61 Wn. (2d) 374, 382, 378 P. (2d) 464 (1963).

be included in one "sale" and it requires platting, in some cases, prior to that "sale".

Nonetheless, even without an express exemption, most courts have concluded that restrictions such as the ones we have pointed out need not be complied with where school lands are taken for public use through the power of eminent domain. *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 Pac. 998, 1001 (1915); *Ross v. Trustees of University*, 30 Wyo. 433, 222 Pac. 3 (1924); 31 Wyo. 464, 228 Pac. 642, 646-7 (1924); *Grossetta v. Choate*, 51 Ariz. 246, 75 P. (2d) 1031 (1938); *Imperial Irrigation Co. v. Jayne*, 104 Tex. 395, 138 S.W. 575, 583-7 (1911); *State v. Walker*, 61 N.M. 374, 301 P. (2d) 317 (1956); *State v. Platte Valley Power and Irrigation District*, 143 Neb. 661, 10 N.W. (2d) 631 (1943). Contra, *State ex rel. Galen v. District Court*, 42 Mont. 105, 112 Pac. 706 (1910).

This has been the view of our own court. In 1911, the supreme court upheld the taking of an easement in school lands by condemnation for street purposes. *Roberts v. City of Seattle*, 63 Wash. 573, 116 Pac. 25 (1911). Eleven years later, in 1922, it permitted condemnation of fee title for a hydroelectric project. *City of Tacoma v. State*, 121 Wash. 448, 209 Pac. 700 (1922). These early decisions were recently confirmed where school lands were taken by the city of Seattle to protect its municipal watershed. *City of Seattle v. State*, 54 Wn. (2d) 139, 338 P. (2d) 126 (1959).

The implied exemption from general constitutional restrictions on the disposal of school lands applies, too, even where there are no proceedings in court and the entire matter is handled administratively. The court assumed this proposition without question in *State ex rel. Polson Logging Co. v. Superior Court*, 11 Wn. (2d) 545, 554, 119 P. (2d) 694 (1941). There the court pointed out that the administrative grant of logging road rights of way was the exclusive method to acquire such easements over state school lands. The court accepted the proposition without question, too, in *State ex rel. Washington Water Power Co. v. Savidge*, 75 Wash. 116, 134 Pac. 680 (1913),* a case involving the acquisition of rights to overflow and impound waters on state school lands.

The decisions in the *Polson Logging Co.* and *Washington Water Power Co.* cases, *supra*, are undoubtedly correct. The power of eminent domain is an inherent power of government; it is not derived from the constitution, but is limited by it. *Miller v. City of Tacoma*, *supra*. Where *private* property is taken by condemnation, public use and necessity involves a judicial rather than an administrative determination because our constitution makes it so. Article I, § 16 (Amendment 9), Washington state constitution. But where *public* property is taken, the determination of public use and necessity may be made *either* by judicial proceedings *or*

*The supreme court records disclose that the lands in question were school lands.

administrative proceedings, as the legislature may choose, because the state's power of eminent domain over public property is not limited by any constitutional provision. *State ex rel. Mason County Power Co. v. Superior Court*, 99 Wash. 496, 500, 169 Pac. 994 (1918).

However—and we now reach the crucial point—it is beyond dispute that full compensation must be made when school lands are devoted to nonschool purposes, as in the case where they are taken for highway uses. *State ex rel. State Highway Commission v. Walker*, 61 N.M. 374, 301 P. (2d) 317 (1956); *State v. Platte Valley Public Power and Irrigation District*, *supra*; *State ex rel. Johnson v. Central Nebraska Public Power and Irrigation District*, 143 Neb. 153, 8 N.W. (2d) 841 (1943). Any other holding would frustrate the basic purpose of the school land trust. Our Thurston county superior court so held when it entered judgment permanently enjoining the use of school lands for park purposes where no provision was made to compensate the common school fund for which the lands were held. *Showalter v. Martin*, Thurston County No. 15380, A.G. File 6395. The attorney general who defended the action did not deem the arguments against the trial court's ruling sufficiently meritorious to justify an appeal. Undoubtedly our supreme court would recognize the duty to make compensation if such a case were before it. In the past, it has gone out of its way to point out that compensation would be paid

in those cases where it upheld the use of school land for street and park purposes. Cf. *Roberts v. City of Seattle*, 63 Wash. 573, 575-6, 116 Pac. 25 (1911); *State ex rel. Garber v. Savidge*, 132 Wash. 631, 233 Pac. 946 (1925).

On the other hand, it is our opinion that the duty to make compensation is satisfied when the amount of the compensation is equal to that which would be deemed just compensation to a private owner. It is familiar condemnation law that benefits may be offset against damages. *In re Queen Anne Boulevard*, 77 Wash. 91, 137 Pac. 435 (1913); *Town of Sumner v. Fryar*, 146 Wah. 607, 264 Pac. 411 (1928). This same principle would, therefore, be applicable where state school lands are acquired for public use by the Highway Department.[6]

## IV

In addition to the authority existing pursuant to RCW 47.12.020, *supra*, to construct state highway facilities on or across state school lands *upon payment of just compensation to the Department of Natural Resources for the benefit of the common schools as aforesaid*[7], the Highway Commission has

[6] In the following cases the court upheld statutes granting easements without compensation where the grant of the easements benefited the lands: *Grossetta v. Choate*, *supra*; *Ross v. Trustees of University*, *supra*; *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, *supra*; *Imperial Irrigation Co. v. Jayne*, *supra*.

[7] A non-expressed condition which, as indicated in the preceding pages of this letter must be read into RCW 47.12.020 by implication in order to save the statute from being a nullity. See *Hazelrigg v. Penitentiary Commissioners*, 184 Ark. 154, 40 S.W. (2d) 998 (1931); *Smallwood v. Jeeter*, 42 Idaho 169, 244 Pac. 149, 153 (1926); *Young v. University of Kansas*, 87 Kan. 239, 124 Pac. 150, 158 (1912); *State v. Pay*, 45 Utah 411, 146 Pac. 300, 304 (1915).

authority to condemn public property through judicial proceedings. *State ex rel. Eastvold v. Superior Court*, 44 Wn. (2d) 607, 269 P. (2d) 560 (1954); *cf. State ex rel. Puget Sound etc. Ry. Co. v. Joiner*, 182 Wash. 301, 47 P. (2d) 14 (1935). Such suits, if commenced against state school lands, are defended by the commissioner of public lands. (RCW 8.28-.010, 79.01.736). The authority to acquire an interest in school lands by formal condemnation proceedings also justifies a settlement of the matter without intervention of the court, by stipulation between the highway commission and the commissioner of public lands or by agreement executed by the parties outside the court. The power to do this is implied; the law does not require the performance of useless acts (in this case a trial where no trial is needed). Cf. *Reiter v. Wallgren*, 28 Wn. (2d) 872, 877, 184 P. (2d) 571 (1947). Public policy favors the settlement of disputes without litigation. *Warburton v. Tacoma School District*, 55 Wn. (2d) 746, 350 P. (2d) 161 (1960); *Abrams v. City of Seattle*, 173 Wash. 495, 23 P. (2d) 869 (1933); *Christie v. Port of Olympia*, 27 Wn. (2d) 534, 179 P. (2d) 294 (1947); *City of Bellingham v. Whatcom County*, 40 Wn. (2d) 669, 245 P. (2d) 1016 (1952); *City of Seattle ex rel. Dunbar v. Dutton*, 147 Wash. 224, 265 Pac. 729 (1928).

The highway commission may also acquire school lands for highway purposes under the provisions of RCW 79.01.414. The statute reads:

> The department of natural resources may grant to any person such easements and rights in state lands, tidelands, shorelands, oyster reserves, or state forest lands as the applicant applying therefor may acquire in privately owned lands through proceedings in eminent domain. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state.

The "person" to whom rights and interests may be granted includes the state itself. By statute and judicial decision (RCW 1.16.080; *Spear v. City of Bremerton*, 90 Wash. 507, 510, 156 Pac. 825 (1916)), the word "person" when used in a legislative act will include public bodies as well as natural persons unless the act as a whole evidences a contrary legislative intent. *Denny Hotel Co. v. Schram*, 6 Wash. 134, 137, 32 Pac. 1002 (1893). In remedial legislation especially "person" will be interpreted broadly to accomplish the purposes of the statute. *State ex rel. Attorney General v. Seattle Gas Co.*, 28 Wash. 488, 493, 68 Pac. 946 (1902). RCW 79.01.414 is remedial legislation. Most public bodies do not have the power to condemn state lands. The statute thus serves as a substitute for this nonexistent right. (There is obvious need to devote public lands to public use from time to time. The vastness of these holdings guarantees this. The Department of Natural Resources administers 627,329.19 acres of state forest lands and 2,164,679.23 acres of other public lands.

Department of Natural Resources, Third Biennial Report (Statistical Supplement), 1960-1962, pp. 36 and 49)

V

Our preceding remarks may be fairly summarized in this way:

1. State school lands are held in trust by the state for its common schools. The trust is imposed by the terms of the Enabling Act under which most school lands were acquired from the federal government and it is confirmed by constitutional provision.

2. Restrictions as to the manner and circumstances under which school lands will be disposed of—or put to nonschool uses—do not apply where school lands are taken for a public use in the exercise of the state's inherent power of eminent domain. The power of eminent domain may be exercised by pudicial proceedings or it may be exercised under administrative proceeding taken in lieu of condemnation.

3. In every case where school lands or an interest in school lands is diverted from its trust purpose, compensation must be made to the Department of Natural Resources for the benefit of the common school fund. The amount of compensation is that which a private owner could claim as just compensation for the taking and damaging of his property.

4. No additional legislation is needed to permit the Department of Highways to acquire school lands from the Department of Natural

Resources for highway uses, nor is additional legislation needed to authorize payment of just compensation for such acquisition.

We trust that the foregoing advice will be of assistance to you.

Very truly yours,

JOHN J. O'CONNELL,
*Attorney General.*

PHILIP H. AUSTIN,
*Assistant Attorney General.*

## APPENDIX B—Easement Sought by the United States in Trust Lands

A perpetual exclusive easement for a site for a reservoir and for the construction, operation, maintenance, and control of a reservoir thereon, including the right to control access over and the exclusive possession and use for reservoir purposes of all of the following described real estate situated in Ferry County, State of Washington:

> The Northwest Quarter of the Northwest Quarter (NW¼ NW¼), the South Half of the Northeast Quarter of the Northwest Quarter (S½ NE¼ NW¼); the South Half of the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (S½ NW¼ NE¼ NW¼); Lot 2, excepting therefrom the South 800 feet of the West 900 feet; and Lot 5, excepting therefrom the North 660 feet of the West 660 feet; all in Section 16, Township 35 North, Range 37 East, W.M.

## APPENDIX C—RCW 90.40.050

When the notice provided for in RCW 90.40.030 shall be given to the commissioner of public lands the proper officers of the United States may file with the said commissioner a list of lands (including in the term "lands" as here used, the beds and shores of any lake, river, stream, or other waters) owned by the state, over or upon which the United States may require rights-of-way for canals, ditches or laterals or sites for reservoirs and structures therefor or appurtenant thereto, or such additional rights-of-way and quantity of land as may be required for the operation and maintenance of the completed works for the irrigation project contemplated in such notice, and the filing of such list shall constitute a reservation from the sale or other disposal by the state of such lands so described, which reservation shall, upon the completion of such works and upon the United States by its proper officers filing with the commissioner of public lands of the state a description of such lands by metes and bounds or other definite description, ripen into a grant from the state to the United States. The state, in the disposal of lands granted from the United States to the state, shall reserve for the United States rights-of-way for ditches, canals, laterals, telephone and transmission lines which may be required by the United States for the construction, operation and maintenance of irrigation works. [Enacted as Laws of Washington 1905, ch. 88, § 5, p. 182.]

## APPENDIX D—Enabling Act of the State of Washington, Sections 10 and 11

Sec. 10. That upon admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain. [Act of February 22, 1889, 25 Stat. 676, at 679.]

Sec. 11. That all lands granted by this Act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than $10 per acre and lands principally

valuable for grazing purposes for not less than $5 per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, * * *

The said lands may be leased under such regulations as the legislature may prescribe; * * *

The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however,* That none of such lands nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

* * *

[Act of February 22, 1889, 25 Stat. 676, at 679-80, as amended by Act of May 7, 1932, 47 Stat 150.]